IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(1) **Criminal Appeal No.97-SB of 2002**

Pali and others **.....Appellants**

v.

State of Haryana **.....Respondent**

...

(2) **Criminal Appeal No.147-SB of 2002**

Mahabir and another **....Appellants**

v.

State of Haryana **....Respondents**

...

Date of Decision : 5 – 1 – 2011

CORAM: HON'BLE MR.JUSTICE KANWALJIT SINGH AHLUWALIA

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Present: Mr.Pritam Saini, Advocate and
Mr.Rahul Vats, Advocate
for the appellants.

Mr.Sandeep S. Mann, Sr. DAG, Haryana.

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KANWALJIT SINGH AHLUWALIA, J. (ORAL)

By this common order Criminal Appeal No.97-SB of 2002 preferred by Palli, Ballu and Kalu @ Jai Kishan sons of Shukla, Ram Krishan son of Sukhiya, Sukhiya son of Sudha and Jagbir son of Dharma and Criminal Appeal No.147-SB of 2002 preferred by Mahabir son of

Shukla and Ram Kumar son of Dharma shall be decided together. They all were named as accused in a case FIR No.315 dated 24.10.1998 registered at Police Station Sadar Panipat under Sections 323, 324, 325, 307, 148 and 149 IPC. The above-said FIR was investigated. Report under Section 173 Cr.P.C. was submitted in the trial Court and the accused were committed to the Court of Additional Sessions Judge, Panipat, who vide his judgment dated 5.1.2002 held them guilty of offence under Sections 148,307,325,324,323 read with Section 149 IPC and vide a separate order of even date sentenced them as under:-

> *"3. Heard. Since the convicts were armed with deadly weapons i.e. Lathi, Jaili and Gandasi at the time of the commission of offence of rioting, therefore, I sentence all the convicts to undergo R.I. for a period of one year each for the commission of offence punishable under Section 148 IPC. I also sentence all the convicts to undergo R.I. for a period of seven years each and a fine of Rs.1000/- each (Rupees one thousand each only) for the commission of offence punishable under Section 307/149 IPC. In default of payment of fine, the convict shall further undergo R.I. for a period of two months. I also sentence the convict to undergo R.I. for a period of three years each and a fine of Rs.250/- each (Rupees two hundred and fifty each only) for the commission of offence punishable under Section 325/149 IPC. In default of payment of fine, the convicts shall undergo further R.I. for a period of 15 days. I also sentence all the convicts to undergo R.I. for a period of two years each for the commission of offence punishable under Section 324/149 IPC. I also sentence all the convict to undergo R.I. for a period of nine months each for the commission of offence punishable under Section 323/149 IPC. In case, the fine is recovered, out of the same, an amount of Rs.8000/- would be paid to Smt.Om Pati and Om Parkash equally. However, the sentences awarded to the convict will*

run concurrently....”

The present appeals are directed against the judgment of conviction and order of sentence.

Criminal proceedings were set into motion on a statement Ex.P19 made by Gulab Singh PW8. Gulab Singh aged 18/19 years stated that he is a resident of Village Kurar and was a student of 10+2. On 23.10.1998 at about 6.00 P.M. he accompanied by his mother and mother's sister Om Pati was going towards their Gher. When they were passing through the Barra of Zile Ram son of Hoshiara, accused Mahabir asked as to why Om Pati was going through their Barra. In the meantime, all other accused arrived at the scene. Mahabir and Jagbir were armed with Gandasies and remaining accused were armed with Lathies. They formed an unlawful assembly. On the lalkara raised, Mahabir gave a gandasi blow on the head of Om Pati. Ram Kishan son of Sukhiya gave a lathi blow on the head of Om Pati. Thereafter Palli gave a Zaili blow on the head of Om Pati. On receiving these injuries, Om Pati fell down on the ground. Thereafter Mahabir, Ballu, Palli, Ram Kishan, Sukhiya, Ram Kumar and Jagbir also caused injuries to Om Pati with their respective weapons. In the meantime, Om Parkash son of Parbhu reached the spot. He tried to rescue Om Pati. At that time, Mahabir gave a Gandasi blow on the head of Om Parkash, as a result of which Om Parkash fell down on the ground. Thereafter, all the accused caused injuries to Om Pakarsh with their respective weapons. The complainant raised an alarm which attracted Subhash and Bassa on the spot. They rescued Om Pati and Om Parkash from the accused and thereafter the accused ran away from the spot along with their respective weapons. ASI Rattan Singh PW10 received a ruqa

from Chaudhary Hospital, Panipat regarding admission of Om Pati and Om Parkash and reached the hospital where statements of Om Pati and Om Parkash were recorded. As stated earlier the above-said FIR was investigated. Challan was submitted and the case was committed to the Court of Additional Sessions Judge, Panipat.

Additional Sessions Judge, Panipat charged all the accused under Section 148 IPC for having constituted unlawfully assembly, as they were armed with deadly weapons like Jaili and Gandasi etc. for causing injuries to Om Pati and Om Parkash. All the accused were also charged for offence under Section 307/149 IPC for causing injuries to Om Parkash. They were also charged for offence under Section 325/149 IPC for causing grievous injuries to Om Pati. They were charged for offences under Sections 324/149 IPC and 323/149 IPC for having causing injuries to Om Pati and Om Parkash. They did not plead guilty and claimed trial.

Dr.Satish Chaudhary PW5 on 23.10.1998 had sent a ruqa to Police Station Sadar Panipat regarding arrival of Om Pati and Om Parkash in an injured condition. Ruqa has been proved as Ex.P5. On the same day, this witness examined Om Parkash and found the following injuries on his person:-

"*1. Stellar shape wound with lacerated margins over right parietal region scalp 4x4 cm dia meter with centre 2 cm deep. Lenier fracture of underlying skull antero posteriorly seen through the wound about 2 cm long.*

2. Right hand:

a) clean incised wound 2x1/4cm x 1/4cm deep middle finger.

b) clean incised wound 4 x 1/4th x ½ cm deep ring finger.

c) clean incised wound 2 x ½ x 1/4th cm deep little finger.

A, B., C obliquely placed over proximal phalanges in line with

each other.

3. *Clean incised wound right shoulder anteriorly 2 x ½ x 1/4th cm deep.*
4. *Contusion right arm at insertion of deltoid muscle 3 x 1cm.*
5. *Contusion right chest anteriorly memory region 10 x 10cm.*
6. *Abrasion ½ x ½ cm over contusion 3 x 3cm over left eye brow.*

Injury No.1 was declared dangerous to life. Injuries No.4 and 6 were declared grievous and the remaining injuries were declared simple.

On the same day, this witness examined Om Pati and found the following injuries on her person:-

1. *Clean lacerated wound fronto parietal region, left side of skull, 5 x 1/4th x 2cm deep.*
2. *Swelling left hand 5th meta-carpal neck with puncture wound ½ x 1/4th x 1/4th cm deep. Swelling 3 x 3cm.*
3. *Swelling right fore-arm middle with step over ulna.*
4. *Clean lacerated wound Ist web space right hand 3 x 1 x 1cm deep.*
5. *Lathi contusion 10 x 3cm over left anterior superior iliac crest.*
6. *Lathi abrasion left arm deltoid region 6 cm x 3 cm.*
7. *Lathi contusion left infrascapular region 30 x 3cm.*
8. *Lathi abrasion left lumbar region 6 x 3cm horizontal.*

Injuries No.2 and 3 were declared grievous and the remaining injuries were declared simple in nature.

The author of the FIR Gulab son of Ram Sarup appeared as PW8 and had not supported the prosecution case. He was declared hostile. He was confronted with his previous statement Ex.P19, on the basis of which FIR was registered.

Bassa son of Om Parkash appeared as PW1 and supported the prosecution case.

Om Pati appeared as PW2 and reiterated the entire occurrence. Om Parkash another injured appeared as PW3.

PW4 HC Rajinder Kumar was joined by the Investigating Officer, who took into possession blood stained earth vide recovery memo Ex.P1 and other weapons vide recovery memos Ex.P2, P3 and P4 from accused Kalu, Ram Kumar and Palli.

PW 6 Ratna son of Prabhu was also a witness to the recovery of weapon from another accused.

Constable Jagbir Singh PW7 had prepared the scaled site plan Ex.P18.

PW 9 Krishan Chander ASI proved registration of formal FIR Ex.P19/1.

PW 10 SI Rattan Singh who was the Investigating Officer narrated the entire occurrence. Thereafter, the prosecution closed its evidence.

Statements of the accused were recorded under Section 313 Cr.P.C. They denied all incriminating circumstances put to them. They had not divulged any defence version. However, in defence Jia Lal, Numberdar of the village was examined who stated that about three years ago some scuffle took place between Parkash party and the accused party but he was not able to divulge the details of occurrence due to darkness.

Dr.S.K.Gupta DW2, Medical Officer, Civil Hospital, Panipat on the day of occurrence i.e. 23.10.1998 examined Sukhiya and found three injuries on his person. On the same day, he examined Mahabir and found

five simple injuries on his person. Injury No.5 was on the skull. This witness also found three injuries on the person of Palli. All the injuries were simple in nature. On the same day, at 11.15 P.M., this witness examined Palla son of Sukhiya and found two injuries on his person. This witness stated that all the injuries on the person of Sukhiya, Mahabir, Palli and Palla were simple in nature.

Pale Ram DW3 Sarpanch of the village stated that on 23.10.1998 there was a fight between the accused and the complainant party. Four persons had participated from the side of accused and 6/7 persons from the side of the complainant.

Satyawan DW4 also stated that there was fight between the parties.

Mr.Pritam Saini, learned counsel appearing for the appellants has stated that in the present case the complainant party was aggressor. They had caused injuries to three accused-appellants. Accused party had suffered fourteen injuries. The complainant party has offered no explanation regarding the injuries suffered by the accused party. It is stated that as the complainant party has caused injuries to the accused party and non explanation of the injuries suffered by them should also be construed as fatal to the prosecution, this Court should hold that complainant party was aggressor and the accused party had acted in self defence.

I have examined the nature of injuries suffered by the accused. Even though two injuries are on head, all injuries were declared simple in nature. Most of the injuries are complain of pain. Not only the injuries suffered by the accused are simple in nature but they are superficial also. Hence, this argument that accused acted in self defence is liable to be

rejected. Prosecution was not bound to explain the kind of injuries suffered by the accused.

Counsel for the appellants has further submitted that it has come in the statement Ex.P19 made by Gulab that he accompanied by his mother and aunt Om Pati were going towards their Khet. When they passed through the Barra of Zile Singh, the occurrence had taken place. Counsel submits that no witness has given the reason as to why the occurrence took place. Genesis and origin of the occurrence is shrouded in the mystery. It is stated that no motive has been spelt out. When this Court asked the counsel for the State that as to how the occurrence had taken place, he stated that occurrence was a sudden fight as the same took place when Om Pati alongwith her sister were passing through the Barra of Zile Singh. It has come in the evidence of DW3 Pale Ram, Sarpanch of the Village that a fight had taken place between the accused and the complainant party. This fact has been further corroborated by DW4 Satyawan, Chowkidar of the village. On the day of occurrence, accused Sukhiya, Mahabir and Palli were examined by DW2 Dr.S.K.Gupta. Palla son of Sukhiya also suffered injuries in the occurrence. Therefore, it is sufficient to hold that on the spur of moment without any pre-mediation a sudden occurrence had ensued. That being so, it cannot be said that accused constituted an unlawful assembly. Hence, Section 148 IPC is not attracted in the present case. Each accused is responsible for the injuries caused by him. It is a case of individual liability. Injury No.1 on the person of Om Parkash having been declared as dangerous to life falls within the ambit of Section 307 IPC. Om Parkash PW3 stated that Mahabir accused had given gandasi blow to him. Therefore, Mahabir is liable to be convicted under Section 307 IPC.

Injuries No.4 and 6 on the person of Om Parkash have been declared as grievous. The author of these injuries has not been specified. Injuries No.2 and 3 on the person of Om Pati have been declared as grievous. Om Pati has also not specified the author of these injuries. Grievous injuries on the person of Om Parkash have been caused with a blunt weapon. Grievous injuries suffered by Om Pati have also been caused by blunt weapons. Author of grievous injuries falling under Section 325 IPC is not known. In these circumstances, no accused can be substantially convicted for offence under Section 325 IPC, hence they are held liable for offence under Section 323 IPC.

In view of the above discussion, it is ordered that accused-appellant Mahabir is held responsible for offence under Section 307 IPC, whereas the remaining accused-appellants are held responsible of offence under sections 323 IPC.

The occurrence in the present case had taken place in the year 1998. A period of more than 12 years is going to elapse. Considering the fact that the accused had suffered mental pain and agony of protracted trial, the sentence is to be suitably reduced. Hence, accused-appellant Mahabir is sentenced to undergo rigorous imprisonment for three years under Section 307 IPC and a fine of Rs.15,000/-. In default of payment of fine, he shall further undergo rigorous imprisonment for nine months. All other accused-appellants who have been found guilty for offence under Section 323 IPC, taking into consideration long protracted trial and the fact that in the last 12 years, no incident had taken place, this Court is of the view that they be released on probation for a period of one year, subject to their furnishing bonds to the satisfaction of Chief Judicial Magistrate, Panipat that during

the period of probation they shall maintain peace and be of good behaviour for a period of one year. However, cost of litigation qua each accused is assessed at Rs.10,000/-. The amount of costs and fine so deposited shall be disbursed to injured Om Parkash and Om Pati equally. In case costs of litigation is not deposited, the benefit of probation shall not accrue to them. The costs shall be deposited by the appellants in the Court of Chief Judicial Magistrate, Panipat within three months from the date of receipt of a certified copy of this order.

With the aforesaid modification in the order of sentence, both the appeals are disposed of.

(KANWALJIT SINGH AHLUWALIA)
JUDGE

January 5, 2011.

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